IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is approved

for reporting or not)

[Chapter VIII Rule 32 (2) (b)]

Description of Case

Writ Petition No. 4940 (S/S) of 2001

Mr. Vinod Kumar Singh ……Petitioner.

Versus.

Union of India and others …… Respondents.

Approved for reporting.

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~~Not approved for reporting~~

Date of Decision September20, 05

Initial of Judge

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(Judgment Reserved)

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 4940 (S/S) of 2001

Mr. Vinod Kumar Singh,
son of late Sri V.Singh,
(Junior Warrant Officer,
posted as LDC (Lascar),
in Group C post, at 789 Signal Unit,
Air Force, C/o 56. APO,
(Air Force Station, Bhowali, Nainital) ….Petitioner.

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Head Quarter, Central Air Command, IAF, Bamrauli, Allahabad.
3. Air Head Quarter, Joint Director, Personnel Civilians, Vayu Bhawan, New Delhi.
4. Station Commander, 789 SU, Air Force, C/o 56 APO
5. Assistant Chief of Air Staff (Personnel Airmen and Civilian), Air Head Quarters, Vayu Bhawan, New Delhi.

……. Respondents.

Hon'ble M.M.Ghildiyal,J.

Heard Sri C.D. Bahuguna, learned counsel for the petitioner and learned standing counsel for Union of India, who has accepted notices on behalf of respondents.

By means of this writ petition, the petitioner has prayed to issue a writ in the nature of Certiorari quashing the order dated 19.11.2001 by which the appointment/ promotion of the petitioner has been cancelled by the Headquarter, Central Air Command, IAF, Bamrauli, Allahabad. The petitioner has

further prayed to issue a direction to respondents to pay special costs to the tune of Rs. 20,000/- to the petitioner for unnecessarily harassing him and compelling him to spend his energy and money in approaching this Court for redressal of his grievances.

The brief facts of the case are that father of the petitioner was in the Indian Air Force on the post of Junior Warrant Officer. He died in harness on 16.07.1994. After the death of petitioner's father, petitioner applied for appointment in Group C post on compassionate ground in the year 1994, as he was qualified for the Group C post he had applied according to his qualification for Group C post. Since there was no post vacant in Group C with the Department, petitioner was provided appointment in Group D post. Having left with no other option, petitioner accepted the appointment on Group D post and joined his duties as Group D employees with the department.

On 0709.2001, the Headquarter, Central Air Command, IAF issued a letter for allotment of vacancy of LDC reserved for Group D employees. By the aforesaid letter, it was provided that the vacancy will be filled up through departmental competitive examination. As per instructions, contained in the letter under reference and it was desired that all relevant instructions on the subject may strictly be followed while selecting the eligible candidates. It was also stated in the aforesaid letter that the completion report and particulars of selected candidates be forwarded to Headquarter latest by 20.09.2001 without fail and if the vacancy is not filled up within the stipulated time the same will be withdrawn.

Six applications, including the application of the petitioner, were received by the Board of Officer, at 789 Signal Unit, Nainital for promotion to group C post through departmental competitive examination. However, out of 6 candidates 5 candidates were appeared in the examination. Petitioner acquired highest marks in the written test, typing test and interview among the five candidates, who appeared in the examination and consequently, the Board of Officers recommended the name of the petitioner for appointment/ promotion from Group D post to Group C post of LDC and the board proceedings was approved by the Station Commander, 789, signal Unit, Air Force, Nainital and appointment/ promotion letter was issued to the petitioner on 14.09.2001 and information was also sent to the Headquarter as desired by the Headquarter in its letter dated 07.09.2001 to the effect that petitioner has been promoted as LDC with effect from 14.09.2001 in the pay scale of 3050-75 -4950-80-4990. The Headquarter, Central Air Command, IAF, Bhamrauli Allahabad vide its letter dated 20.09.2001 communicated the information regarding promotion of the petitioner to the post of LDC with effect from 14.09.2001 to Air Headquarter, Vayu Bhawan, New Delhi. The Air Force, Central Accounts Office, New Delhi vide its letter dated 25.10.2001 allotted Pass No. 39610- F to the petitioner so as to enable the Account Office, to release the salary of the petitioner for the post of LDC and accordingly the salary of the petitioner was released. On 09.11.2001, the Headquarter, Central Air Command, IAF abruptly commanded the 789, Signal Unit, Nainital to cancel the appointment / promotion of the petitioner and on the basis of that order dated 09.11.2001 issued by Headquarter, Central Air Command,

IAF, the Station Commander, 789, Signal Unit, Nainital issued an order to the petitioner on 19.11.2001 cancelling the appointment / promotion of the petitioner from Group D post to Group C post. Order dated 09.11.2001 and 19.11.2001 are under challenged in the present writ petition.

Respondents have filed counter affidavit and in the counter affidavit the only stand taken by the respondents is that the appointment / promotion of the petitioner was not made in accordance with Rules.

I have perused the order dated 09.11.2005 issued by Central Air Command which is as under:

"From: Central Air Command

To:789, Signal Unit, Air Force

Signal No. & Date : PC/414-09Nov.

Officer in charge Civil Admin from Officer in charge personnel Civilians. Cancellation of appointment order. Refer your signal No. PC/34 dated November/08, SPSO spoken to Station Commander on November/08 on the subject at 1315 Hrs from cancellation, appointment be cancelled immediately and confirm."

On the basis of this order of Central Air Command, Wing Commander has issued order dated 19.11.2005, which is quoted below:

"789 SU,Air Force, C/o 56, APO
789 SU/611/1/PC

Sri V.K. Singh,
789, SU Air Force, C/o 56 APO

Notice of Reversion of promotion order in accordance with HQ CAC IAF PC/414 Dated 09, Nov, 2001

1. *Pleased refer appointment letter issued to you on 14 September, 2001.*

2. *The undersigned has been directed to issue this reversion order by Head Quarter, Central Air Command, Indian Air Force vide their Signal No. PC / 414 dated 09 Nov. 2001 cancelling the promotion order from Group D to Group C issued to you vide this Unit Appointment Order letter dated 14 September 2001".*

From the perusal of the aforesaid order which are mentioned in the present writ petition it is clear that contingency as contained in appointment/ promotion letter has not taken place. The contingency raised in the appointment/ promotion of the petitioner is also relevant and the same is quoted hereinunder:

> *"Mr. Vinod Kumar Singh son of late Sri Vakil Singh, is appointed as Lower Division Clerk is a substantive / Temporary capacity with effect from 14 September 2001 until further orders, in the scale of pay Rs. 3050-75-3950-80-4590 plus allowances admissible. He will be on probation for three years. His services are liable to be terminated without notice under rules in vogue if found unsuitable or otherwise on disciplinary grounds during the period of this probation."*

The said appointment/ promotion letter states that the services are liable to be terminated without notice under Rules if found unsuitable or otherwise on disciplinary ground. The impugned order does not say that the petitioner was unsuitable for the appointment / promotion or the appointment is being cancelled on any disciplinary ground.

Learned counsel for the petitioner has attacked impugned order on various grounds. First submission of the learned counsel for the petitioner is that the appointment letter issued on 14.09.2001 provides that services of the petitioner will liable to be terminated without notice under Rules in vogue if found unsuitable or otherwise on disciplinary ground during the period of probation. Cancellation of the appointment / Promotion of the petitioner is illegal as none of the contingencies as contained in the appointment letter has taken place. Neither the services of the petitioner has been dispensed with on the ground of unsuitability nor any disciplinary ground has been

taken to cancel the appointment / promotion of the petitioner and as such, order of cancellation of appointment / promotion of the petitioner is non existence in the eyes of law.

From the perusal of the impugned order of cancellation of appointment/ promotion of the petitioner dated 09.09.2001 and 19.09.2001 it is clear that cancellation of appointment/ promotion of the petitioner does not contain any reason.

Respondents have filed counter affidavit and in the counter affidavit it has been stated by the respondents that the procedure prescribed for the filling up the post of LDC was not followed by the concerned authority. It is settled preposition of law that reasons in respect of any order has to exist on the body of the order itself and the reason for passing order cannot be supplemented by means of affidavit by the department. The Hon'ble Apex Court in series of cases has held that the statutory functionary makes an order based on certain grounds, its validity must be judged by reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order in the beginning may, by the time it comes to court on account of challenge get validated by additional grounds later brought out.

Learned counsel for the petitioner has submitted that the appointment/ promotion of the petitioner was abruptly cancelled by the respondents in violation of principle of natural justice and petitioner was not made known by any notice or opportunity of hearing, prior to cancellation of his appointment / promotion of the petitioner as to why and on what grounds or reasons his appointment/ promotion was

being cancelled by the respondents. Petitioner was never served with any notice nor was afforded any opportunity of hearing for being heard by the respondents before cancelling his appointment / promotion letter or after passing of appointment / promotion of the petitioner. The right has accrued to the petitioner to hold the promotional post and by cancellation of the said appointment without giving opportunity of hearing to the petitioner is clear violation of principle of natural justice. It is the principle of natural justice that no person should be condemned without giving opportunity of hearing. Order of appointment/ promotion of the petitioner confers vested right on the incumbent to hold the post on which he has been appointed. That right cannot be taken away without affording any opportunity of hearing to him. Any order passed in violation of principle of natural justice is rendered void. In the present case, there is no dispute that the impugned order has been passed without affording any opportunity of hearing to the petitioner and as such, the order of cancellation of appointment/ promotion of the petitioner is not sustainable in the eyes of law.

In the case of Basudeo Tiwary Vs. Sido Kanhu University and others reported in 1948 (6) Judgement today page 464 the Hon'ble Supreme Court has arrived at the conclusion that appointment contrary to the provision of the Act, Statutes, Rules and Regulations, etc. was illegal. The finding has to be recorded and unless such finding is recorded, the termination cannot be made, but to arrive such a conclusion necessarily an inquiry will have to be made as to whether such appointment was contrary to the provision of the Act etc. In the present case such exercise is absent, the condition precedent is stands unfulfilled. To arrive at such

finding, necessarily, an inquiry has to be held and in holding such inquiry a notice has to be issued to the person whose appointment was under inquiry. If notice is not given to him, then it is like playing Hamlet without the Prince of Denmark i.e. if the employee concerned whose rights are affected is not given notice of such a proceeding and a conclusion is drawn in his absence, such conclusion would not be just, fair or reasonable as noticed by the Hon'ble Supreme Court in series of cases.

Admittedly, in the present case notice has not been given to the petitioner before holding that his appointment/ promotion is irregular or unauthorized. Hence, the impugned orders for cancelling the appointment / promotion of the petitioner is not sustainable in the eyes of law.

Respondents in para 9 of the counter affidavit have submitted that the petitioner on the hand has challenged the impugned order by the which the appointment / promotion of the petitioner was cancelled and on the other hand, has applied for the same post again after cancellation of his appointment / promotion.

Merely filing of application by the petitioner does take away the right of the petitioner to challenge the impugned order. The respondents has submitted that since the promotion was provided to the petitioner without following the Rules and Regulations prevalent in the Department is void, ab initio. The petitioner has not obtained his appointment/ promotion by exercising fraud or misrepresentation. There was no involvement of the petitioner in exercising any fraud or misrepresentation. It is not a case of respondents and as such, such appointment/

promotion cannot be termed as void, ab initio. At the best, it can be said that it was fault on the part of the Departmental Authorities in not adopting proper procedure. In that case, appointment/ promotion granted to the petitioner cannot be termed as void, ab initio and cannot be repudiated, annulled or cancelled by the Department without giving prior notice to the petitioner and without affording opportunity of hearing to the petitioner.

It is not disputed that the petitioner passed Departmental Examination along with other candidates and has acquired the highest marks in written test, typing test and interview. The Board of the Officers recommended the name of the petitioner for appointment / promotion from Group D post to Group C post i.e. to the post of LDC and the Board proceedings were approved by the station Commander, which is also approved on the basis of document filed along with writ petition. It is also not disputed that the said appointment/ promotion granted to the petitioner was cancelled by the respondents without giving any opportunity of hearing to the petitioner and it is a clear cut case of violation of principle of natural justice.

For the reasons recorded above, the writ petition is allowed. Impugned orders dated 09.11.2001 and 19.11.2001 passed by the respondents are quashed. No order as to costs.

(M.M. Ghildiyal,J.)

September 20, 2005
SkSharma